

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

BRICKEY JUAN MANUEL,

Plaintiff,

v.

CAPTAIN CHASTAIN,

Defendant.

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CIVIL ACTION No. H-16-2595

ORDER OF DISMISSAL

Plaintiff Brickey Juan Manuel is a state probationer currently incarcerated at the Cheyenne Center, Inc. (the “Center”), in Houston, Texas. The Center contracts with the Texas Department of Criminal Justice to provide residential substance abuse treatment to a limited number of state prisoners. Plaintiff filed this *pro se* state inmate section 1983 lawsuit against the captain of an M.T.C. prison center. He complains that the captain denied him leave to do legal research off-premises at a public law library, and that it resulted in dismissal of his civil lawsuit.

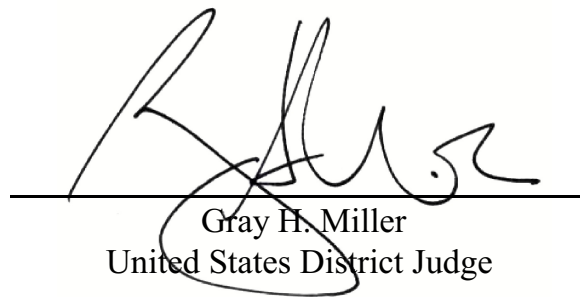
To the extent plaintiff is currently a prisoner, he is subject to the “three strikes” provision of section 1915(g). Records for this Court show that plaintiff has accumulated at least five “strikes” and may no longer proceed *in forma pauperis*. See *Manuel v. Walmart, Inc.*, C.A. No. H-15-3026 (S.D. Tex.) (dismissed for failure to state a claim); *Manuel v. Hernandez*, C.A. No. H-15-3099 (S.D. Tex.) (same); *Manuel v. Monk*, C.A. No. H-15-3426 (S.D. Tex.) (dismissed as frivolous and for failure to state a claim); *Manuel v. Johnson &*

Johnson, C.A. No. H-15-3537 (S.D. Tex.) (dismissed for failure to state a claim); *Manuel v. Manuel*, C.A. No. H-16-0080 (S.D. Tex.) (same). All of these lawsuits were dismissed prior to plaintiff's filing of the instant lawsuit. Plaintiff's complaint does not demonstrate that he was in imminent danger of serious physical injury at the time it was filed, and he may not proceed *in forma pauperis*.

In the alternative, or to any extent plaintiff is not currently a prisoner for purposes of sections 1915 and 1915A, his complaint fails to state a viable claim for which relief can be granted under section 1983. Plaintiff complains that he was denied leave to do legal research off-premises for his lawsuit in C.A. No. H-15-3426, and that the lawsuit was dismissed. Construed liberally, his complaint raises a claim for denial of access to the courts. The Court notes that plaintiff's lawsuit in C.A. No. H-15-3426 was dismissed as frivolous and for failure to state a claim on August 9, 2016. An inmate who alleges the denial of his right of access to the courts must demonstrate a relevant, actual injury stemming from the defendant's allegedly unconstitutional conduct. *Lewis v. Casey*, 518 U.S. 343 (1996). This requires the inmate to allege that his ability to pursue a non-frivolous, arguable legal claim was hindered. *Brewster v. Dretke*, 587 F.3d 764, 769 (5th Cir. 2009). Plaintiff fails to show that his dismissed lawsuit raised a viable, non-frivolous claim that he was unable to raise due to lack of access to a public law library.

The lawsuit is DISMISSED WITHOUT PREJUDICE pursuant to section 1915(g), subject to plaintiff's payment of the full \$400.00 filing fee within twenty-eight days from date of this dismissal. In the alternative, this lawsuit is DISMISSED WITH PREJUDICE for failure to state a viable claim for which relief can be granted under section 1983. Any and all pending motions are DENIED AS MOOT.

Signed at Houston, Texas, on August 26, 2016.



Gray H. Miller
United States District Judge